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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,321	06/27/2003	Gregory Swab	881987-17	8723

29619 7590 02/13/2004  
SCHULTE ROTH & ZABEL LLP  
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EXAMINER

ORTIZ, ANGELA Y

ART UNIT PAPER NUMBER

1732

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/608,321	SWAB ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Angela Ortiz	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Angelis, USP 2,794,085 in view of Fila et al., USP 3,853,393.

The cited primary reference substantially teaches the basic claimed process of manufacturing eyewear comprising a plastic frame and plastic temples, the frame and temples removably connected via a hinge, and electrical components of an apparatus in the temple. Plural conductors are provided in the temple and frame, having an electrical connection with the components. A connecting hinge through female/male attachment

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means connects the frame and temples. The device is useful as a hearing aid, which includes means readable on an ear bud. See col. 3, lines 32-75; col. 4, lines 45-70; col. 5, lines 30-75.

The reference is silent to the step of molding as claimed; however, it does set forth that the temples and frame are formed.

The added secondary reference teaches as conventional the process of injection molding plastic eyewear temples, wherein conductors are encapsulated within the temples. The molded temples house hearing aid components, and are molded of conventional plastic materials using conventional molding means. See col. 3, lines 10-40, 54-65.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to mold the plastic temples and frame, in view of the molding process set forth in the added reference, when performing the process set forth in the added reference, for achieving the desired step of forming the plastic eyewear.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Angelis, USP 2,794,085 in view of Fila et al., USP 3,853,393 as applied to claims 1-4 above, and further in view of Haken, USP 6,629,076.

The previous art combination remains as applied above.

The previous art combination does not set forth a radio transceiver and ad hoc wireless network as claimed.

The added reference sets forth as conventional eyewear with means for hearing and aiding speech. The eyewear includes embedded microphone, processor and battery, readable on the claimed radio processor, which forms an ad hoc wireless network with a plurality of devices. See col. 1, line 60 to col. 2, line 25; col. 2, lines 37-60.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a radio transceiver and ad hoc wireless network as shown in the added reference, when performing the process set forth in the previous art combination, for improved means for aiding and hearing speech.

With respect to claims 6 and 8, see col. 3, lines 5-25.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USP's 5404385; 5594511; 5652637; 5949516; 6012812; 6091546; 6099117; 6163926; 6231181; 6582075.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela Ortiz whose telephone number is 571-272-1206. The examiner can normally be reached on Monday-Thursday 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on 571-272-1196. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Angela Ortiz  
Primary Examiner  
Art Unit 1732

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